

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,)	
Appellant,)	
)	
v.)	Docket No. 03-4792
)	
ZACARIAS MOUSSAOUI,)	
Appellee.)	

MOTION TO EXPEDITE APPEAL AND FOR LONGER BRIEFS

Pursuant to Local Rules 12(c) and 32(b) of the Fourth Circuit’s Internal Operating Procedures, the United States, with the consent of counsel for Appellee, respectfully requests the Court to expedite the briefing schedule for this appeal such that oral argument will occur during the Court’s arguments currently scheduled for the week of December 2, 2003, and for permission to submit longer briefs, based upon the following:

The United States has filed its notice of appeal today, as authorized by the Office of the Solicitor General, from the district court’s order of October 2, 2003, striking the death penalty notice and ordering that “the United States may not present at trial any evidence or argument that the defendant was involved in, or had knowledge of, the planning or execution of the attacks of September 11, 2001,” as a sanction for the Government’s refusal to allow the defendant to have direct access to his *al Qaeda* confederates. The Court has recognized that the issue raised in this “appeal is one of extraordinary importance” United States v. Moussaoui, 333 F.3d 509, 511-12 (4th Cir. June 26, 2003).

The Court previously dismissed the Government’s appeal regarding this issue for lack of jurisdiction, ruling that the Government must first endure a sanction before the Court can rule on

the substantive question. Id. at 512-16. “[C]ognizant that this case involves substantial national security concerns,” this Court wrote that it “intend[s] to expedite any subsequent appeal that may be taken.” Id. at 517.

For these reasons, the Government respectfully requests the Court to expedite the briefing schedule and set this case for oral argument during the Court’s arguments currently scheduled for the week of December 2, 2003.¹ If oral argument is to be set during that week, the parties respectfully suggest the following briefing schedule:

Docketing Statement to be Filed by October 14, 2003

Parties will Designate Contents of Joint Appendix by October 17, 2003²

Appellant’s Brief by October 24, 2003

Appellee’s Brief by November 14, 2003

Appellant’s Reply Brief by November 24, 2003.

If this schedule is unacceptable to the Court, the United States asks the Court to set a briefing schedule that will allow oral argument during the first week of December.

In its June 26 Opinion, the Court noted that “[t]he substantive issues involved here are complex and difficult, and the answer is not easily discerned.” Id. at 517. Because the Government refused to allow access to two additional enemy combatants during proceedings after the previous appeal, the issues presented now have to be considered in the context of three

¹Both parties will request oral argument in their briefs.

²The parties respectfully request that they be allowed to cite to the joint appendices filed with the prior appeal and file an additional joint appendix that includes only relevant material filed after the case was remanded to the district court.

rather than the one putative witness. Therefore, the parties respectfully request the Court to allow both sides to submit their opening briefs not to exceed 22,000 words in length with the Appellant's reply brief not to exceed 11,000 words.³ The issues at stake in this appeal constitute the "exceptional reasons" envisioned by Local Rule 32(b) meriting longer briefs.

As mandated by Local Rule 27(a), the undersigned has conferred with Frank W. Dunham, Jr., counsel of record for Appellee, and Mr. Dunham does not oppose the relief requested in this motion.

Respectfully submitted,

PAUL J. McNULTY
UNITED STATES ATTORNEY

By: /s/
Robert A. Spencer
Kenneth M. Karas
David J. Novak
Assistant United States Attorneys
Counsel for Appellant

³During the prior appeal, the Court allowed the Government to file a brief not to exceed 17,000 words in length and then allowed supplemental briefing on the issue of substitutions under the Classified Information Procedures Act, all of which will have to be re-briefed while also addressing the district court's rulings on the two additional enemy combatants.

Certificate of Service

The undersigned hereby certifies that on the 7th day of October, 2003, a copy of the Appellant's Motion was faxed and mailed to the following attorneys for Appellee:

Edward B. MacMahon, Jr., Esquire
107 East Washington Street
P.O. Box 903
Middleburg, Virginia 20118
(540) 687-3902
fax: (540) 687-6366
metro tel. no.: (703) 589-1124

Frank W. Dunham, Jr., Esquire
Public Defender
Eastern District of Virginia
1650 King Street
Alexandria, Virginia 22314
(703) 600-0808
Fax: (703) 600-0880

Alan Yamamoto, Esquire
643 S. Washington Street
Alexandria, Virginia 22314
(703) 684-4700
Fax: (703) 684-6643

/s/
David Novak
Assistant United States Attorney